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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 365 of 1984

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE COMPANY LIMITED

Versus

PUSHPABEN WD/O V N DABHI

Appearance:

1. First Appeal No. 365 of 1984
MR AP MEDH for Petitioner No. 1
MR MC BHATT for Respondent No. 1-8

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 10/07/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

#. The appellant is the insurer in respect of a jeep-car bearing No.GTF-175, owned by the opponent No.2 and driven by the opponent No.1, which unfortunately met with an accident that occurred on 1.2.1982, resulting into the death of one Vishaji Narsinhji Dabhi, aged about 43 years, who was travelling as paid passenger in the said jeep-car. The original claimants and the opponents herein, who are the heirs and legal representatives of

the deceased, were awarded an amount of Rs.91,400/= with running interest at the rate of 6% per annum from the date of application till realization, with proportionate costs, by holding the appellant-insurer liable to the extent of Rs.50,000/-, which is, as such, under direct challenge in this appeal.

#. The contention advanced on behalf of the appellant-insurer has been that the liability was limited to the extent of Rs.5,000/- in the written statement and Rs.10,000/= as per the memo of petition. However, contrary to this, the Tribunal has held it liable to the extent of Rs.50,000/-. In view of the relevant provisions of the Motor Vehicles Act, whereas the original claimants have questioned the amount of compensation by filing the cross objections, we have considered the entire factual matrix with evidence emerging from the record, coupled with the relevant propositions of the law of tort, and the latest case law. It is evident from the record that the deceased was 43 years' old at the time of accident, and he was working as a teacher at the relevant time, and was shouldering the responsibility of almost seven persons in the family, and was drawing a salary of Rs.900/= per month at the relevant time. We have found that the Tribunal has committed a serious error in making assessment of the dependency value of the deceased towards the common family and non consideration of prospective loss of income considering the prospects of the deceased in the field of teaching.

#. In the absence of insurance policy on record, the contention of the appellant-insurer that its liability was limited to the extent of Rs.5,000/= or Rs.10,000/= was rightly rejected by the Tribunal by determining the liability of the Insurance Company to the extent of Rs.50,000/= in view of the provisions of Section 95 of the Motor Vehicles Act. In the absence of any evidence, oral or documentary, it cannot be said that the Tribunal has committeed any error in fastening the liability upon the insurer to the tune of Rs.50,000/=. On the contrary, we have noticed that the assessment of compensation, considering the prevalent income of the deceased, his future prospects, his liability, the value of dependency, and non consideration of loss of prospective dependency to the common family fund, made by the Tribunal is erroneous, which has resulted into inadequate amount of compensation being awarded, and as such, it is required to be put in proper and correct legal shape by awarding reasonable additional amount of compensation. Though the original claim was for a sum of Rs.1.50 lacs, no

cross-objections or Appeal is preferred by original claimants. However considering both the recognized heads and other relevant circumstances, we are of the opinion that the claimants would be entitled for additional amount of compensation of Rs.40,000/= only. Therefore, in exercise of powers under Order 41, Rule 33 we hold that the respondents in the appeal, who are the original claimants and heirs and legal representatives of the deceased bread winner of the family, are entitled to additional amount of compensation to the tune of Rs.40,000/- with interest at the rate of 6% per annum with proportionate costs thereon, which shall be liable to be paid by the original opponents No.1 and 2, namely the driver and the owner of the offending vehicle, as the liability of the insurance company is, under the policy, limited upto to Rs.50,000/= with proportionate costs and interest.

#. In view of the above facts and circumstances, the award under challenge shall stand modified in the terms that over and above the awarded amount, globally, under all the recognized heads, the claimants shall be entitled to a sum of Rs.40,000/=, by way of additional amount of compensation, with interest at the rate of 6% per annum with proportionate costs. It will be open for the Tribunal to appropriately apportion this amount and issue reasonable directions while making disbursement in respect of additional amount of compensation. The interim order made in the appeal staying the implementation of the original award would not assume any survival value now.

#. The appeal shall accordingly stand dismissed with costs.

#. The Registry shall transmit the original Record and Proceedings forthwith.

(J.N.Bhatt, Actg.C.J.)

(A.L.Dave, J.)

(sunil)